Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of		
Policy and Rules Concerning the Interstate Interexchange Marketplace	)	CC Docket No. 96-61
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

To: The Commission

COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION

AT&T Wireless Services, Inc. ("AWS"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby submits its comments in support of the seven petitions for reconsideration of the Commission's Reconsideration Order filed in the above-captioned proceeding.[1] AWS concurs with the petitioners that Congress did not intend the Commission's rate integration policy to apply to commercial mobile radio services ("CMRS") and that extension of such policy to CMRS would, for no apparent purpose, disrupt existing business relationships, hamper wireless providers' ability to respond to competition, and require elimination of innovative calling plans. The Commission should reconsider its decision to subject CMRS providers to rate integration or, at the very least, declare that rate integration will not apply across CMRS affiliates or to wide area rate plans. In the alternative, the Commission should forbear from enforcing section 254(g) as applied to CMRS providers.

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[1] Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, First Memorandum Opinion and Order on Reconsideration, FCC 97-269 (rel. July 30, 1997) (Reconsideration Order").

I. THERE IS NO LEGAL OR POLICY BASIS FOR SUBJECTING CMRS PROVIDERS TO RATE INTEGRATION

The decision to apply rate integration to CMRS was made almost in passing without adequate notice to affected carriers or any record evidence that integration of CMRS interstate, interexchange rates is either required by Section 254(g) or necessary to protect the public interest. Nor does the Reconsideration Order reveal any understanding of the severe repercussions application of the rate integration policy would have on the CMRS industry and existing customers. This failure to articulate the reasons for its decision or to base such decision on a complete and accurate record alone warrants reconsideration.

As the petitioners point out, there is no satisfactory explanation for expanding the rate integration policy. In adding section 254(g) to the Communications Act last year, Congress intended solely to codify existing rate integration policies, not to extend such policies to additional services or providers.[2] Given that CMRS never has been subject to rate integration and given the practical difficulties of trying to fit CMRS into this regulatory framework, it is clear that the Commission's recent interpretation of section 254(g) fails to comport with Congress's legislative intent.[3] Indeed, because of CMRS providers' unique regulatory posture,

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[2] See, e.g., Petition of BellSouth Corporation for Reconsideration and Forbearance, CC Docket No. 96-61, at 5 (filed Oct. 3, 1997), citing H.R. Conf. Rep. No. 104-458, at 132 (1996) reprinted in 1996 U.S.C.C.A.N. 124, 143-44 ("Conference Report") ("The conferees intend the Commission's rules to require geographic rate averaging and rate integration, and to incorporate the policies contained in the Commission's [1976 Integration of Rates and Services Order].")

[3] See Petition of AirTouch Communications for Reconsideration, CC Docket No. 96-61, at 10-13 (filed Oct. 2, 1997); Petition for Clarification, Further Reconsideration, and Forbearance of the Cellular Telecommunications Industry Association, CC Docket No. 96-61 (filed Oct. 3, 1997) ("The inapplicability of the rate integration rule to CMRS is underscored by the practical difficulties of applying the rules to wireless carriers.")

application of rate integration to the wireless industry would undermine the congressional goal of creating a "pro-competitive, de-regulatory" telecommunications marketplace.[4]

All the petitioners describe the unwarranted and apparently unanticipated consequences rote application of rate integration would have on existing CMRS rate plans and business structures. To comply with the Reconsideration Order, AWS might have to eliminate a number of existing wide-area calling plans and forgo efforts to design new plans aimed at permitting customers to take complete advantage of the mobile nature of the wireless network. AWS competes both on a national and regional basis and, while it generally utilizes national pricing solutions, it needs flexibility to address competition from other regional and local providers.[5] If, for instance, a wireless competitor in a particular region adopts a long distance rate plan markedly different from AWS's and thereby gains a competitive advantage, AWS must be able to pursue the avenues necessary to restore its place in the market. AWS should not have to choose, by virtue of the rate integration policy, whether to forgo a regional response altogether or amend its rates in every market in the nation each time there is a strategic move by one local competitor.

Such regulatory rigidity obviously will harm AWS's business interests but, more importantly, it will work to the detriment of the very consumers the rate integration policy is intended to protect. Because of vigorous competition in the wireless industry, subscribers often can tailor wireless offerings to their needs. In the absence of any evidence that CMRS subscribers in any particular part of the nation, including offshore locations, are unable to take

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[4] Conference Report at 113.

[5] AWS has specifically built into its pricing software the capability to change long distance rates based upon the CMRS rate plan chosen by the subscriber.

advantage of such competitive circumstances, there does not appear to be a legitimate policy reason to reduce the choices currently available to customers.

If, despite the arguments raised by the petitioners, the Commission finds that Section 254(g) applies to CMRS providers, it should grant a permanent waiver of those aspects of the rate integration policy it stayed on October 3, 1997.[6] In the Stay Order, the Commission stayed for CMRS providers application of its requirements that interstate interexchange providers integrate rates across affiliates and integrate rates in circumstances in which they have wide-area calling plans. The Commission recognized that there is a significant degree of affiliation in the CMRS industry and requiring all affiliates to comply with the rate integration policy could have anticompetitive consequences.[7] As the petitioners note, the affiliate rule could require separate carriers that are partners in one market to coordinate and charge the same CMRS interstate, interexchange rates in other markets where they operate as competitors.[8] In addition, the Stay Order acknowledged the wide variety of rate plans available to wireless subscribers, including bundled offerings of air time and long distance charges, flat charges for interexchange services within specified areas, and expanded local calling areas that may or may not correspond to MTA

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[6] See Policy and Rules Concerning the interstate Interexchange Marketplace, CC Docket No. 96-61, Order, FCC 97-357 (rel. Oct. 3, 1997) ("Stay Order")

[7] Id. at ¶ 16.

[8] For instance, in Los Angeles, AWS and BellSouth each have a controlling interest in the A block cellular licensee. In Miami, however, AWS holds one cellular license and BellSouth holds the other, and in Atlanta AWS is a PCS provider and BellSouth operates a cellular system. BellSouth and AWS each have numerous business relationships with other wireless entities in other markets. It is not clear how BellSouth and AWS can be expected to integrate their rates when they also have to integrate rates with these other wireless providers. More to the point, it is not clear how the public interest would be served by a rule that essentially requires price fixing by competitors.

boundaries.[9] There is simply no reason carriers should be required to eliminate or revise such plans and to do so would be extremely disruptive to customers. While carving out exceptions to the rate integration policy is a cumbersome way to resolve the problems raised by attempting to fit CMRS into an inappropriate regulatory scheme,[10] if the Commission determines that rate integration applies to CMRS, it must at the very least, make these accommodations to avoid significant anticompetitive consequences.

II. IF THE COMMISSION DENIES RECONSIDERATION, IT SHOULD FORBEAR FROM ENFORCING SECTION 254(g) AS APPLIED TO CMRS PROVIDERS

While AWS agrees with the petitioners that Section 254(g) cannot legitimately be read to cover CMRS, if the Commission reaches the opposite conclusion, AWS urges it to forbear from so applying the policy. Section 10 of the Communications Act requires the Commission to "forbear from applying any regulation or any provision of the Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets," if enforcement is not necessary to ensure just and reasonable and nondiscriminatory rates and to protect consumers and that forbearance is consistent with the public interest.[11/]

As the petitioners demonstrate, forbearance from enforcement of Section 254(g) as applied to CMRS providers meets this three-part test. Rate integration clearly is not necessary to ensure that CMRS rates and practices are just and reasonable. The Commission has found on numerous occasions that the CMRS industry is competitive and that such competition serves as

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9 Stay Order at ¶ 15.

10 For example, some beneficial rate plans might not qualify as "wide-area" plans and attempts to distinguish among affiliates for regulatory purposes have always proved troublesome.

11/ 47 U.S.C. § 160(a).

an effective deterrent to anticompetitive or discriminatory behavior.[12] In contrast, attempts by wireless providers to comply with the rate integration rule could cause them unwittingly to behave in a manner that exemplifies a monopolistic, rather than a competitive, market. Similarly, rate integration will do nothing to protect CMRS subscribers and may actually result in higher rates and less choice. Finally, as shown above, forbearance would serve the public interest because it would leave CMRS providers free to respond to marketplace demands and to provide customers with the innovative services and rate plans they have come to expect.

[12] Indeed, the Commission has chosen, on the basis of this vigorous competition in the wireless marketplace, to forbear form enforcing Sections 203, 204, and 205 of the Communications Act with respect to CMRS providers.

CONCLUSION

For the foregoing reasons, AWS respectfully requests that the Commission reconsider its decision to apply the rate integration policy to CMRS providers. In the alternative, AWS asks the Commission to exercise its Section 10 authority to forbear from enforcing the policy as applied to CMRS.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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